

APPOINTED AND *AD HOC* AGENCIES IN THE FIELD OF THE SCOTTISH OFFICE*

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The first thing to be said about bodies functioning in fields of concern to central government, not being government departments or elected local authorities, is that they come in an infinite variety. Some are set up under statute, some by Royal Charter, some by Royal Warrant, some by Ministerial Minute of Appointment, some even under the Companies Acts. Some are made up wholly of ministerial appointees, some include nominations from other sources, some have an elected element. Only a minority of members are paid by way of salary or fee, as distinct from expenses and payment for loss of remunerative time. Some are appointed for a specific task and disappear when they have discharged it, while some are standing bodies with continuing functions to perform.

Some have executive functions in their own right, some are executive agents of Ministers, some have no executive functions at all. Some are spending money voted by Parliament, some operate commercially, some have other types of income (e.g. levies or registration fees), some incur no expenditure beyond their own expenses. Some are advisory, either in the sense of advising departments on points arising in the course of day-to-day administration, or in the sense of conducting their own studies and producing formal reports with recommendations on matters of policy.

If I attempted to cover the whole field in this chapter in any detail, the result would I fear be almost as chaotic as the

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starting point. What I shall therefore do is to seek to identify the main segments of the field, and look more closely at one or two of the most recent Scottish additions to it that have special features of their own.¹

The simplest group is that of more or less expert advisory committees, where the object of the exercise is to contribute to the deliberations of Ministers and departments an expert input that may not be available at all, or not on a sufficiently comprehensive basis, among officers of the department. Committees composed predominantly of professional members are the clearest example of this, whether the professionals are doctors, farmers, teachers, or what you will. Especially where the bodies are set up by statute, an important part of the objective has been to reassure professional groups outside that they will have proper opportunities and facilities for making their views known at the appropriate stage in policy development or executive action by Government.

Usually the statute will enjoin the Minister who has responsibility for appointing the members to consult with such organisations representing specific interests as may seem to him appropriate; and where the body is not statutory he will do so anyway. In practice some of the individuals suggested for appointment in the course of such consultations will in fact be appointed, but Ministers usually expect to be given a choice — i.e. there should be more suggestions than there are vacancies. Moreover the Minister may, for reasons of balance, find it necessary to appoint someone who was not included among the original suggestions. Provided consultations are conducted in good faith, I do not myself think there is much wrong with this part of the system.

A variant in this group of bodies is the consultative council or committee, where the declared purpose is to provide a forum for full discussion between departments and outside interests of topics of mutual interest to the participants. Here, nomination of non-official members may be entirely appropriate. Ministerial or official chairmanship may also be useful, a device sometimes adopted for so-called advisory bodies but which has always seemed to me less appropriate in that particular context.

Besides the expert advisory committee, which will usually have a continuing existence, more broadly based groups are set up from time to time to consider topics with considerable

ramifications, in the hope that a consensus of views will ultimately emerge as a basis on which administrative or legislative action can then be taken with the minimum of dissension. For major issues such groups are often constituted as Royal Commissions, where the appointments are the responsibility of the Prime Minister as the Sovereign's principal adviser, and the Warrant of Appointment confers powers to compel the attendance of witnesses and the production of information.

The issue that arises here is that such bodies may be set up in circumstances in which the Government itself might have taken a policy decision or initiative. This criticism is more a criticism of lack of political will than of the performance of such Commissions or committees, and gains in validity when it becomes clear that the resulting report is taken as serving no more definitive a purpose than the basis of a further round of consultations with all interests in sight — or, worse, where no further action is taken at all.

The next broad division I take to be that of bodies established with executive power exercised in the name of the Minister and at his expense. In financial terms much the most significant group is that of the health boards, of which there are now 15 in Scotland, spending something like £750 million of Government money this year. Except as regards general practitioner services, where the rights and duties of practitioners are closely governed by statutory regulations, the health boards discharge a fairly wide remit as agents of the Secretary of State, who can for this reason be called to account by Parliament for any of their actions. It is almost invariably his officers who appear before the Public Accounts Committee when health expenditure is under scrutiny. At the same time the boards can themselves sue and be sued and are not entitled to Crown privilege.

Membership of the boards is not closely regulated by the statute, which contents itself with requiring consultation with local authorities and professional organisations, and also with universities for the medical teaching interest. Control by the Secretary of State is exercised partly by general guidance and partly by a system of budgetary approval.

Historically, largely to overcome the initial reluctance of the medical profession to participate in a national health service at all, two separate administrative machines composed

of appointed members were created to administer the hospital services and the general practitioner services respectively. Local authorities continued to administer the public health services already established. This tripartite structure has now formally been replaced by a unified system of administration by appointed health boards, and the major question is whether such boards are needed at all.

It is I suppose still the position that administration of the comprehensive health service by local authorities would not be acceptable to the professions. It is not quite so clear that administration by the Government department at its own hand, through decentralised offices as appropriate, would be equally unacceptable. What is clear is that the health boards have developed very extensive bureaucracies while at the same time there are still considerable numbers of staff in the central department concerned with the business of the boards. General policy and major items, such as the hospital building programme, are in fact in the hands of the central department. It is difficult to avoid the conclusion that some simpler system could reduce expense and increase efficiency.

There is also in Scotland a statutory Central Services Agency, a rather curious animal. Its purpose is to discharge such health service functions as are thought to be best handled centrally rather than by health boards. Such functions may either be functions of the Secretary of State "delegated" by him, or functions of health boards referred to the Agency by statutory order and discharged by it on behalf of the boards. The major referred function is that of actually building hospitals, a task calling for highly specialised expertise that could not reasonably or economically be provided by each board as and when required. The Agency is under a Management Committee, appointed by the Secretary of State but partly on the nomination of health boards and partly after consultation with the boards. The need to maintain it alongside the central department is not to my mind self evident.

Nor is Parliament by any means content to trust the Secretary of State and the health boards to get on with their assigned tasks. The statute provides also for the creation of a Scottish Health Service Planning Council, which has the duty of advising the Secretary of State on the exercise of his functions and also of making an annual report to him which he has to

lay before Parliament. Not all the members of this Council are appointed by the Secretary of State; each health board appoints a member, and so also do the university medical schools. The object of setting up the Council is partly to enlist all relevant expertise for planning and the formulation of policy, but partly also — and this is at least as important — to reassure the various professions that their interests and their expertise will in fact be given full weight.

At health board level, there is another complete set of advisory bodies, the local health councils, charged with the task of representing the interests of the public in the health services in their localities. Here again the purpose is mainly to provide reassurance that health boards will be properly responsive to local needs and local views. In addition, there is an elaborate professional advisory committee structure at health board level. All parts of the advisory machinery — central and local — could of course be attached to a structure of administration by the central department itself.

Other groups of bodies with executive responsibilities operating almost wholly on Government money include a number of Boards of Governors of specialist education establishments, such as Colleges of Art and of Agriculture, Colleges of Education, and certain technical institutions falling outside the local authority field but short of university status; and also governing bodies of agricultural research institutes. The members are mostly drawn from a variety of nominating bodies, but some — and in a few cases all — are appointed by the Secretary of State at his own hand. Some of them provide expertise not readily available within the appropriate central department, and they give a valuable sense of identity to the individual institutions. They are not festooned with advisory bodies in the way the health boards are.

Then there are two fairly distinct groups of regulatory bodies. On the one hand there are a variety of marketing bodies, e.g. the Milk Marketing Boards, the Herring Industry Board, and the White Fish Authority, where some kind of regulation and development of the industries was thought necessary. In some of these cases there is provision for elected as well as appointed members, and the degree of Ministerial intervention in their affairs is relatively limited. I suppose they carry in some degree the classic monopoly risk, as illustrated by the recent

EEC attack on the Milk Boards, but their operations seem to be generally acceptable.

A second set of regulatory bodies are those concerned with the internal affairs of particular professions. The General Medical Council is the oldest of these, with detailed statutory composition and powers in relation to which Ministers play relatively little part. It was followed in due course by such other bodies as the General Dental Council, the General Nursing Council, the Central Midwives' Board, the General Teaching Council and many others. Election by the professions concerned, together with appointments by the teaching institutions, play the major part in providing the members of this Councils. If there is a criticism, it might be that these bodies — especially those concerned with ancillary workers — could become too inward-looking, perhaps attaching more importance to status and formal qualifications than to the practical skills necessary in the provision of services to the public.

I must not yield to the temptation of going into the vast field of tribunals and analogous bodies in the social field, including such diverse growths as the Rent Tribunals and the Children's Panels, or I might never emerge. So I will turn next to a number of bodies of fairly recent origin, of considerable significance in the economic or environmental field. I take them in order of their appearance on the scene. These are the New Town Development Corporations, the Highlands and Islands Development Board, the Countryside Commission for Scotland, the Scottish Tourist Board, and the Scottish Development Agency. The point to keep before us in looking at these bodies is whether their existence is really necessary.

The first New Town Development Corporations were set up in the early post-war years, as instruments for the construction of New Towns in various parts of England and Scotland. I suppose the task could have been entrusted to the existing local authorities, but it was thought — rightly in my view — that no such authority could be expected to devote the concentrated attention to a particular locality necessary to get major developments moving. And since by definition the New Towns were mostly planned for relatively undeveloped areas, election would not have been an appropriate way of setting them up. Appointment by the Secretary of State was therefore natural, although care has always been taken to include (on a

personal basis) members also serving on the local authority or authorities affected.

Primarily, the New Town Development Corporations, as the name implies, are development authorities rather than local government authorities; and although they relieve the local authorities of some responsibilities, they depend on the authorities for a good deal of support — e.g. in the provision of services such as water supply and education. General planning control of the New Towns is mainly in the hands of the Secretary of State, operating through approval of master plans and approval — primarily in capital investment terms — of broad programmes in the housing, industrial or commercial fields. The Corporations operate for the most part on money lent by the Government, and in principle they were intended ultimately to become self-supporting. I do not think their work could have been done equally well otherwise, and there is already provision for winding them up when their purpose has been served.

The Highlands and Islands Development Board, set up in 1965, owed something to the New Town experience, but was rather a new kind of animal. It was given a very general remit to prepare and promote measures for the economic and social development of the Highlands and Islands, with specific powers to make grants and loans in support of industry, commerce, or any other relevant activity. Operating wholly on voted money, controlled by annual budgets settled with the Secretary of State, the Board also needed express Ministerial approval for general or specific proposals and for certain particular items such as the acquisition of land. Assistance to industry was governed by formal arrangements approved by the Secretary of State and the Treasury.

While no particular qualifications or consultations were specified for Members of the Board, inevitably appointed by the Secretary of State, the Board was rather unusual in having several whole-time Members including the Chairman. Indeed the statute requires whole-time members to be in the majority, this having been conceded under pressure by the Parliamentary Opposition who argued that only in this way could the effectiveness of the Board be secured. Necessarily these Members had to receive substantial salaries, a situation not arising in any of the other bodies with which I have so far dealt.

Once again Parliament did not fully trust the Secretary

of State and the Board to get on with the job without further guidance, and the Act also established the Highlands and Islands Development Consultative Council, to advise the Board on the exercise of their functions. There are some rather peculiar directions about consultations before Members are appointed — inevitably by the Secretary of State — but there are no provisions for salaries or publication of reports. I suppose the Council might not have been set up had there not, for many years before the appointment of the Board, been a non-statutory Council whose task it was to facilitate the co-ordination of the work of government departments and other public agencies designed to promote Highland development.

The Board has in my judgement done a good job, if at times an uneven one, and given the structure of local government at the time it was set up, I do not think its work could have been done so effectively by any other machinery. Now that we have reorganised local government, however, I am not so sure that the Board is indispensable. But I suppose that it is only sensible to wait and see what changes a Scottish Assembly may wish to make in the local government structure, assuming that an Assembly comes to pass.

Next, the Countryside Commission for Scotland. This body made a relatively late entry on the countryside scene, the corresponding English Commission having been set up in 1949 as the National Parks Commission and having done much to stimulate the development of National Parks south of the Border. The original Scottish view had been that separate National Park machinery was not necessary in Scotland. Instead, certain areas were identified as being specially important in this context and were made subject to "special planning control" under the Town and Country Planning Acts. In essence this involved the scrutiny of applications for proposed developments by the Secretary of State as well as by the local planning authority concerned.

However, a variety of interested organisations continued to press the view that something more positive was needed in Scotland. Eventually the Countryside Commission for Scotland was set up by statute in 1967, the year before the National Parks Commission became the English Countryside Commission. Financed by a government grant, it is charged with the broad task of securing the development and improvement of facilities

for the enjoyment of the Scottish countryside and for the enhancement of its natural beauty and amenity. This the Commission seeks to do largely by education, persuasion and the provision of expert advice; but it also has limited powers of land acquisition and management, and of making grants and loans to persons other than public bodies.

The Chairman and Members of the Countryside Commission are of course appointed by the Secretary of State, after consultation — as to part of the membership — with local authority associations and organisations representing countryside interests. In this way considerable expertise, associated with enthusiasm and supported by practical experience, is brought to bear on the issues arising. I would not myself assert that equal progress could have been made under purely departmental auspices, without the stimulus of the Commission.

The Scottish Tourist Board was established as a statutory body in 1969. A non-statutory body had operated for many years past, under the joint auspices of the Secretary of State and the Scottish Council, Development and Industry. There was, however, a general feeling that something more effective was needed, with some financial backing from public funds; and the administration of such funds was held to require a statutory Board. Appointed by the Secretary of State, without the usual statutory directions as to consultations, the Scottish Board is part of wider machinery including corresponding Boards in England and Wales, and also the British Tourist Authority (appointed by the Secretary of State for Trade), on which the chairmen of the three Country Boards sit. The Authority concerns itself largely with overseas publicity, mainly using material supplied by the Country Boards.

The Boards have a general remit to promote tourism, and have limited powers to give various forms of financial assistance subject to close Ministerial control. They also have powers to inspect tourist establishments, and there is provision — not yet invoked — for Ministerial orders authorising them to enforce a system of classification. In some ways the Scottish Tourist Board is analogous to the Countryside Commission for Scotland, although in practice it is a smaller body and has less obvious formal expertise among its Members. The case for maintaining it as a separate organisation outside departments is not to my mind so strong, although there could be no question of

dismantling the Scottish Board as long as the rest of the Great Britain structure remains.

The last body I have chosen for mention in this context is the Scottish Development Agency. Established under an Act of 1975, this is generally regarded as a very important body in the Scottish economic and industrial scene. Its functions include not only virtually all aspects of economic development, but also the improvement of the environment. Like the New Town Corporations it is financed mainly by loans from the National Loans Fund, although there is also some revenue financing from voted money. Again its members are appointed by the Secretary of State, on a specification calling for experience in a variety of fields relating to its functions without mandatory consultations. Only the Chief Executive — appointed in the first place by the Secretary of State but subsequently by the Agency with the Secretary of State's approval — is a whole-time Member of the Agency with a substantial salary. The present Chief Executive is in fact the Deputy Chairman.

The Scottish Development Agency in some respects took the place of the earlier Scottish Industrial Development Office, an Office set up within the Department of Trade and Industry which had somewhat similar powers in the economic field. Following the 1974 election, however, the view prevailed that many decisions on support for and investment in particular industrial and allied enterprises could best be taken otherwise than in the Civil Service machine. Hence the Scottish Development Agency, which also absorbed the former Scottish Industrial Estates Corporation and the Small Industries Council for the Rural Areas in Scotland. So far as loan finance at commercial rates is concerned, the Council has a fair degree of discretion, and provision is also made for equity participation.

Where selective grants and loans at non-commercial rates are concerned, powers are still reserved in effect to the Secretary of State, although there is a curious arrangement for him to direct the Agency to exercise his powers in specified cases. In this latter field the Secretary of State has the assistance of a statutory advisory body, essentially a continuation of an earlier non-statutory advisory group which operated alongside the Scottish Industrial Development Office. The Agency is not obligated to consult this particular body, but informal contacts are maintained.

It is perhaps early to judge the success of the Scottish Development Agency, but it has been far more effective than some people, at least, expected. Certainly it has had to take decisions of a kind, and on a time scale, that would have been quite impracticable within a Civil Service machine where every issue involves the Minister's accountability to Parliament.

For completeness I should at least say something about the nationalised industries, of which three — the two Electricity Boards and the Scottish Transport Group — operate under the umbrella of the Scottish Office. Ministerial control is limited and indirect; and most of the industries, although operating largely or wholly on capital advanced by the Government, depend on consumers and customers for their income and are under a duty broadly to balance their revenue accounts. Some form of appointment by Ministers has hitherto been regarded as the only possible arrangement, and relatively little criticism is in fact heard of the way this is done in Scotland. However, the developing theme of employee participation indicates a possible future method of identifying some of the members of the Boards.

Ministerial control is in form exercised mainly through capital investment programmes which Boards have to submit for approval, and statutory approval of major schemes. There are statutory powers to Ministers to give general directions, but these powers have proved largely unworkable and ministerial influence is to a considerable extent exerted by informal means. Most nationalised industries are producing corporate plans, i.e. documents setting out their aims and intentions for appropriate periods of years, and these plans serve to assist Ministers in considering investment programmes for more limited periods ahead.

Other restraints on the Scottish Electricity Boards include statutory Fisheries and Amenity Committees appointed by the Secretary of State, advising both Boards and having access to the Secretary of State who can oblige a Board to conform to a recommendation by either Committee. In addition, each Board has a Consultative Council, set up by statute with its chairman a Member of the Board, charged particularly with considering matters of interest to consumers and again having access to the Secretary of State. Although its Members are appointed by the Secretary of State, he is obliged to draw between two-fifths and three-fifths of the Members from a panel of persons nominated

by the appropriate local authority association; and the balance, after appropriate consultations, from persons representing agriculture, commerce, industry, labour and the general interests of consumers. Here then is another example of the kind of checks and balances that Parliament imposes.

Moreover, electricity tariffs are subject to scrutiny by the Price Commission, who can delay price increases for detailed investigation under the auspices of the Commission. Most of the Scottish Transport Group's affairs are, however, excluded from the field of the Price Commission, being controlled instead by Ministerially appointed independent statutory Traffic Commissioners who discharge a wide range of licensing and regulatory functions relating to Road Traffic.

It is plain — and grows plainer every day — that government departments, as hitherto understood, are not suitable instruments for running commercial operations. Parliament has recognised this by setting up the Boards, but it does not really trust its instruments to do the job. Hence the inevitable tensions that exist between a Minister and a nationalised industry — inevitable if for no other reason than the different time scales as well as the different value judgments on which Ministers and most of the nationalised industries operate. At the same time it has to be accepted that the nationalised industries cannot in practice be left to operate on purely commercial criteria. A report of the National Economic Development Office in 1976 dealt with all this at some length, and few would claim that the White Paper published in April 1978 has given final answers to all the issues that were or might be raised about control of nationalised industries and their relationships with Ministers.²

This paper presents only a brief and necessarily incomplete survey of appointed and *ad hoc* bodies in the field of the Scottish Office. It may, however, be of some assistance to those who seek to identify particular aspects or areas of the subject for study in depth.

REFERENCES

1. For a complete list of appointed and *ad hoc* bodies and their sponsoring departments as listed in the library of the House of Commons, see table in the reference section at the end of the book.
2. *Nationalised Industries in the United Kingdom: their role in the economy and control in the future*. National Economic Development Office. 1976.